



Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VII

OTHER PROPERTY, BUSINESSES, INVESTMENTS ETC.

Superannuation funds, profit sharing schemes, employee trusts etc.

239 [F¹Disposals to trustees of employee trusts]

(1) Where—

- (a) a close company disposes of an asset to trustees in circumstances such that the disposal is a disposition which by virtue of section 13 of the ^{M1}Inheritance Tax Act 1984 (employee trusts) is not a transfer of value for the purposes of inheritance tax, or
- (b) an individual disposes of an asset to trustees in circumstances such that the disposal is an exempt transfer by virtue of section 28 of that Act (employee trusts: inheritance tax),

this Act shall have effect in relation to the disposal in accordance with subsections (2) and (3) below.

(2) Section 17(1) shall not apply to the disposal; and if the disposal is by way of gift or is for a consideration not exceeding the sums allowable as a deduction under section 38—

- (a) the disposal, and the acquisition by the trustees, shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and
- (b) where the trustees dispose of the asset, its acquisition by the company or individual shall be treated as its acquisition by the trustees.

Paragraph (b) above also applies where section 149(1) of the 1979 Act applied on the disposal of an asset to trustees who have not disposed of it before the coming into force of this section.

Status: Point in time view as at 06/04/2021.

Changes to legislation: *Taxation of Chargeable Gains Act 1992, Section 239 is up to date with all changes known to be in force on or before 17 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Where the disposal is by a close company, section 125(1) shall apply to the disposal as if for the reference to market value there were substituted a reference to market value or the sums allowable as a deduction under section 38, whichever is the less.
- (4) Subject to subsection (5) below, this Act shall also have effect in accordance with subsection (2) above in relation to any disposal made by a company other than a close company if—
- (a) the disposal is made to trustees otherwise than under a bargain made at arm's length, and
 - (b) the property disposed of is to be held by them on trusts of the description specified in section 86(1) of the ^{M2}Inheritance Tax Act 1984 (that is to say, those in relation to which the said section 13 of that Act has effect) and the persons for whose benefit the trusts permit the property to be applied include all or most of either—
 - (i) the persons employed by or holding office with the company, or
 - (ii) the persons employed by or holding office with the company or any one or more subsidiaries of the company.
- (5) Subsection (4) above does not apply if the trusts permit any of the property to be applied at any time (whether during any such period as is referred to in the said section 86(1) or later) for the benefit of—
- (a) a person who is a participator in the company (“the donor company”), or
 - (b) any other person who is a participator in any other company that has made a disposal of property to be held on the same trusts as the property disposed of by the donor company, being a disposal in relation to which this Act has had effect in accordance with subsection (2) above, or
 - (c) any other person who has been a participator in the donor company or any such company as is mentioned in paragraph (b) above at any time after, or during the 10 years before, the disposal made by that company, or
 - (d) any person who is connected with a person within paragraph (a), (b) or (c) above.
- (6) The participators in a company who are referred to in subsection (5) above do not include any participator who—
- (a) is not beneficially entitled to, or to rights entitling him to acquire, 5 per cent. or more of, or of any class of the shares comprised in, its issued share capital, and
 - (b) on a winding-up of the company would not be entitled to 5 per cent. or more of its assets;
- and in determining whether the trusts permit property to be applied as mentioned in that subsection, no account shall be taken—
- (i) of any power to make a payment which is the income of any person for any of the purposes of income tax, or would be the income for any of those purposes of a person not resident in the United Kingdom if he were so resident, or
 - (ii) if the trusts are those of a profit sharing scheme approved under Schedule 9 to the Taxes Act of any power to appropriate shares in pursuance of the scheme.
- (7) In subsection (4) above “subsidiary” has the meaning given by section [F²1159 of and Schedule 6 to] the Companies Act [F²2006] and in subsections (5) and (6) above “participator” has the meaning given [F³by section 454 of CTA 2010], except that it does not include a loan creditor.

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(8) In this section “close company” includes a company which, if resident in the United Kingdom, would be a close company as defined in section 288.

Textual Amendments

- F1** S. 239 heading substituted (with effect in accordance with art. 11(4) of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2009 \(S.I. 2009/730\)](#), arts. 1(1), **11(2)**
- F2** Words in s. 239(7) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\)](#), arts. 1(1), **4(1)(i)**
- F3** Words in s. 239(7) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 1 para. 253** (with Sch. 2)

Marginal Citations

- M1** 1984 c. 51.
- M2** 1984 c. 51.

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